

Introduced by Senator LieuFebruary 11, 2014

An act to amend Section 1405 of the Penal Code, relating to DNA testing.

LEGISLATIVE COUNSEL'S DIGEST

SB 980, as introduced, Lieu. Prisoners: DNA testing.

Existing law allows a person who was convicted of a felony and is currently serving a term of imprisonment to make a motion for the performance of forensic deoxyribonucleic acid (DNA) testing. Existing law requires a court to grant the motion for DNA testing if it determines that the requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction.

This bill would make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1405 of the Penal Code is amended to
- 2 read:
- 3 1405. (a) A person who was convicted of a felony and is
- 4 currently serving a term of imprisonment may make a written
- 5 motion before the trial court that entered the judgment of conviction
- 6 in his or her case, for performance of forensic deoxyribonucleic
- 7 acid (DNA) testing.

(b) (1) An indigent convicted person may request appointment of counsel to prepare a motion under this section by sending a written request to the court. The request shall include the person's statement that he or she was not the perpetrator of the crime and that DNA testing is relevant to his or her assertion of innocence. The request also shall include the person's statement as to whether he or she previously has had counsel appointed under this section.

(2) If any of the information required in paragraph (1) is missing from the request, the court shall return the request to the convicted person and advise him or her that the matter cannot be considered without the missing information.

(3) (A) Upon a finding that the person is indigent, he or she has included the information required in paragraph (1), and counsel has not previously been appointed pursuant to this subdivision, the court shall appoint counsel to investigate and, if appropriate, to file a motion for DNA testing under this section and to represent the person solely for the purpose of obtaining DNA testing under this section.

(B) Upon a finding that the person is indigent, and counsel previously has been appointed pursuant to this subdivision, the court may, in its discretion, appoint counsel to investigate and, if appropriate, to file a motion for DNA testing under this section and to represent the person solely for the purpose of obtaining DNA testing under this section.

~~(4) Nothing in this section shall be construed to~~ *This section does not* provide for a right to the appointment of counsel in a postconviction collateral proceeding, or to set a precedent for any such right, in any context other than the representation being provided an indigent convicted person for the limited purpose of filing and litigating a motion for DNA testing pursuant to this section.

(c) (1) The motion shall be verified by the convicted person under penalty of perjury and shall do all of the following:

(A) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.

(B) Explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

1 (C) Make every reasonable attempt to identify both the evidence
2 that should be tested and the specific type of DNA testing sought.

3 (D) Reveal the results of any DNA or other biological testing
4 that was conducted previously by either the prosecution or defense,
5 if known.

6 (E) State whether any motion for testing under this section
7 previously has been filed and the results of that motion, if known.

8 (2) Notice of the motion shall be served on the Attorney General,
9 the district attorney in the county of conviction, and, if known, the
10 governmental agency or laboratory holding the evidence sought
11 to be tested. Responses, if any, shall be filed within 60 days of the
12 date on which the Attorney General and the district attorney are
13 served with the motion, unless a continuance is granted for good
14 cause.

15 (d) If the court finds evidence was subjected to DNA or other
16 forensic testing previously by either the prosecution or defense, it
17 shall order the party at whose request the testing was conducted
18 to provide all parties and the court with access to the laboratory
19 reports, underlying data, and laboratory notes prepared in
20 connection with the DNA or other biological evidence testing.

21 (e) The court, in its discretion, may order a hearing on the
22 motion. The motion shall be heard by the judge who conducted
23 the trial, or accepted the convicted person's plea of guilty or nolo
24 contendere, unless the presiding judge determines that judge is
25 unavailable. Upon request of either party, the court may order, in
26 the interest of justice, that the convicted person be present at the
27 hearing of the motion.

28 (f) The court shall grant the motion for DNA testing if it
29 determines all of the following have been established:

30 (1) The evidence to be tested is available and in a condition that
31 would permit the DNA testing requested in the motion.

32 (2) The evidence to be tested has been subject to a chain of
33 custody sufficient to establish it has not been substituted, tampered
34 with, replaced or altered in any material aspect.

35 (3) The identity of the perpetrator of the crime was, or should
36 have been, a significant issue in the case.

37 (4) The convicted person has made a prima facie showing that
38 the evidence sought to be tested is material to the issue of the
39 convicted person's identity as the perpetrator of, or accomplice

1 to, the crime, special circumstance, or enhancement allegation that
2 resulted in the conviction or sentence.

3 (5) The requested DNA testing results would raise a reasonable
4 probability that, in light of all the evidence, the convicted person's
5 verdict or sentence would have been more favorable if the results
6 of DNA testing had been available at the time of conviction. The
7 court in its discretion may consider any evidence whether or not
8 it was introduced at trial.

9 (6) The evidence sought to be tested meets either of the
10 following conditions:

11 (A) The evidence was not tested previously.

12 (B) The evidence was tested previously, but the requested DNA
13 test would provide results that are reasonably more discriminating
14 and probative of the identity of the perpetrator or accomplice or
15 have a reasonable probability of contradicting prior test results.

16 (7) The testing requested employs a method generally accepted
17 within the relevant scientific community.

18 (8) The motion is not made solely for the purpose of delay.

19 (g) (1) If the court grants the motion for DNA testing, the court
20 order shall identify the specific evidence to be tested and the DNA
21 technology to be used.

22 (2) The testing shall be conducted by a laboratory mutually
23 agreed upon by the district attorney in a noncapital case, or the
24 Attorney General in a capital case, and the person filing the motion.
25 If the parties cannot agree, the court shall designate the laboratory
26 to conduct the testing and shall consider designating a laboratory
27 accredited by the American Society of Crime Laboratory Directors
28 Laboratory Accreditation Board (ASCLD/LAB).

29 (h) The result of any testing ordered under this section shall be
30 fully disclosed to the person filing the motion, the district attorney,
31 and the Attorney General. If requested by any party, the court shall
32 order production of the underlying laboratory data and notes.

33 (i) (1) The cost of DNA testing ordered under this section shall
34 be borne by the state or the applicant, as the court may order in
35 the interests of justice, if it is shown that the applicant is not
36 indigent and possesses the ability to pay. However, the cost of any
37 additional testing to be conducted by the district attorney or
38 Attorney General shall not be borne by the convicted person.

39 (2) In order to pay the state's share of any testing costs, the
40 laboratory designated in subdivision (g) shall present its bill for

1 services to the superior court for approval and payment. It is the
2 intent of the Legislature to appropriate funds for this purpose in
3 the 2000–01 Budget Act.

4 (j) An order granting or denying a motion for DNA testing under
5 this section shall not be appealable, and shall be subject to review
6 only through petition for writ of mandate or prohibition filed by
7 the person seeking DNA testing, the district attorney, or the
8 Attorney General. The petition shall be filed within 20 days after
9 the court's order granting or denying the motion for DNA testing.
10 In a noncapital case, the petition for writ of mandate or prohibition
11 shall be filed in the court of appeal. In a capital case, the petition
12 shall be filed in the California Supreme Court. The court of appeal
13 or California Supreme Court shall expedite its review of a petition
14 for writ of mandate or prohibition filed under this subdivision.

15 (k) DNA testing ordered by the court pursuant to this section
16 shall be done as soon as practicable. However, if the court finds
17 that a miscarriage of justice will otherwise occur and that it is
18 necessary in the interests of justice to give priority to the DNA
19 testing, a DNA laboratory shall be required to give priority to the
20 DNA testing ordered pursuant to this section over the laboratory's
21 other pending casework.

22 (l) DNA profile information from biological samples taken from
23 a convicted person pursuant to a motion for postconviction DNA
24 testing is exempt from any law requiring disclosure of information
25 to the public.

26 (m) Notwithstanding any other provision of law, the right to
27 file a motion for postconviction DNA testing provided by this
28 section is absolute and shall not be waived. This prohibition applies
29 to, but is not limited to, a waiver that is given as part of an
30 agreement resulting in a plea of guilty or nolo contendere.

31 (n) The provisions of this section are severable. If any provision
32 of this section or its application is held invalid, that invalidity shall
33 not affect other provisions or applications that can be given effect
34 without the invalid provision or application.